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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,064	09/13/2000	Donald Eugene Brodnick	GEMS8081.040	7626

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EXAMINER	
EVANISKO, GEORGE ROBERT	
ART UNIT	PAPER NUMBER
3762	

DATE MAILED: 12/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/661,064	BRODNICK ET AL.	
	Examiner	Art Unit	
	George R Evanisko	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 October 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-36* is/are pending in the application.

4a) Of the above claim(s) *16-35* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15 and 36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 11-13, and 36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Murphy (WO 98/40009).

Claims 1-3, 7, 9, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Saltzstein et al (5704364). Salzstein states that the system can all be used in a PC which provides the integrated monitor, processor, and interface and is inherently portable since it is a PC. In addition, the device is an interactive internet appliance since the applicants specification on page 8 states that an "internet appliance is any device capable of transmitting such data over an interconnected communication system".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4-6, 11-13, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn (5564429).

Bornn discloses the claimed invention including using different configuration of electrodes except for the 12 lead wire assembly and processing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ECG monitoring system as taught by Bornn, with a 12 lead wire assembly and processing since it was known in the art that ECG monitoring systems use 12 lead wire assemblies and processing to provide a complete and easily readable ECG data record for determining cardiac conditions and for allowing more accurate diagnoses of patient conditions.

Claims 1, 2, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over David et al (5544649).

David discloses the claimed invention including except for the 12 lead wire assembly and processing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ECG monitoring system as taught by David, with a 12 lead wire assembly and processing since it was known in the art that ECG monitoring systems use 12 lead wire assemblies and processing to provide a complete and easily readable ECG data record for determining cardiac conditions and for allowing more accurate diagnoses of patient conditions.

Claims 3 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn (or David, Salzstein, or Murphy).

Bornn (or David, Salzstein, or Murphy) discloses the claimed invention except for the wireless interface being an interactive internet TV appliance allowing voice, video, and ECG transmission concurrently (claim 3), having an interactive internet appliance transmit the voice, video, and ECG data (claims 7-9), and using infrared transmitters and receivers to communicate between the appliance and interface (claim 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the remote monitoring ECG system as taught by Bornn (or David, Salzstein, or Murphy), with the wireless interface being an interactive internet TV appliance allowing voice, video, and ECG transmission concurrently, having an interactive internet appliance transmit the voice, video, and ECG data, and using infrared transmitters and receivers to communicate between the appliance and interface since it was known in the art that remote monitoring ECG systems use the wireless interface being an interactive internet TV appliance allowing voice, video, and ECG transmission concurrently or having an interactive internet appliance transmit the voice, video, and ECG data as a way to easily and quickly transfer large amounts of voice, video, and data concurrently over existing communication networks and since it was known in the art that remote monitoring ECG systems use infrared transmitters and receivers to communicate between different elements to provide ease of use of monitors for transmission of data over short distances without the burden of transmission lines potentially getting tangled.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn (or David, Salzstein, or Murphy) in view of Morgan et al (5782878).

Bornn (or David, Salzstein, or Murphy) discloses the claimed invention except for a GPS system connected to the communication interface and being enabled by the processor when a signal is received by the healthcare provider. Morgan teaches that it is known to have a GPS system connected to the communication interface to allow the remote determination of the location of a patient by the health care provider. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the monitoring system as taught by Bornn (or David, Salzstein, or Murphy), with a GPS system connected to the communication interface as taught by Morgan, since such a modification would provide an monitoring system with a GPS system connected to the communication interface to allow for the remote determination of the location of a patient by the health care provider. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the monitoring system as taught by Bornn (or David, Salzstein, or Murphy) in view of Morgan, with the GPS system being enabled by the processor when a signal is received by the healthcare provider since it was known in the art that monitoring GPS systems are programmed to allow the processor to enable the GPS system by a signal from the healthcare provider to allow the provider to enable the GPS system to locate a patient when the patient is distressed and unable to communicate his/her location.

Response to Arguments

Applicant's arguments filed 10/3/03 have been fully considered but they are not persuasive. The dictionary definition of "portable", "integrate", "video", and "on demand" have been provided. All of the previous rejections still stand since the introduction of the claim limitation "integrated with the ECG monitor" are all inherently in the claimed references. In

each prior art reference, the ECG monitor and wireless interface are coordinated into a functioning whole that transfers the ECG data (an "integrated" unit). It is suggested to use claim terminology similar to "integral". All the systems are portable since they all are capable of being moved about. The systems must somehow get to their location of use, whether it be by a person carrying the system or a forklift and truck, and are therefore portable. All the prior art systems are on-demand since they can be used when needed. Of course the systems may have range or power supply limitations, but so does the applicants system. Just as in the applicants system, when the system is in a location (jungle, desert, mountain, etc) where cellular or computer service is not available, the system can not be used. It is questioned whether the applicant has specification support for the use of "on demand". Providing "video" means the visual portion of either fixed or moving objects. The applicant has not used the term "moving" video. The argument that the examiner "must" provide an explanation at the end of the paragraph for a 102 or 103 rejection is not persuasive since the MPEP does not state this. In rejections where the references clearly show the claimed elements, an explanation need not be provided ("clearly anticipated"). But, the examiner has provided marked up copies of the references with this action showing the claimed elements. The examiner has provided a new rejection based on Salzstein et al. The rejection is necessitated by amendment since new claim 36 was added and since a new limitation was made to independent claim 1.

The argument that Bornn teaches a series of paired electrodes and one skilled in the art would readily recognize the distinctions between a paired electrode system and a 12 lead wire assembly is not persuasive since the examiner has recognized there is a difference and therefore provided the 103 rejection. In addition, Bornn recognizes, in column 9, that multiple different

ECG electrodes and configurations are possible and can be used in his system. Finally, Murphy and Salzstein et al are two teachings of many that shows the use of a portable monitor using 12 lead wire assemblies and processing and provides a teaching for the 35 USC 103 rejections that it is well known in the art to use 12 lead wire assemblies to provide a complete and easily readable ECG data record for determining cardiac conditions and for allowing more accurate diagnoses of patient conditions.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703 306-4520.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.

George R Evanisko
Primary Examiner
Art Unit 3762

12/10/3

GRE
December 10, 2003